

## Welwyn Hatfield Borough Council – Submission Local Plan

### Statement of Mr Alan Perkins FRICS – Aurora Properties (UK) Limited

#### Joint Examination – Birchall Garden Suburb (WGC5/SDS2 and EWEL1)

1. This statement responds to the questions raised by the Inspector in respect of Birchall Garden Suburb.

#### Procedural Matters

2. The Regulation 18 Draft Local Plan in January 2015 identified WGC5 (Figure 5 page 44) for 700 new homes. However, the Draft Local Plan contained no information about the previous use of the site for industrial and domestic landfill waste or to explain what remediation might be required. At paragraph 10.23 the Draft Local Plan stated:

*“WGC5 was included in a previous consultation, but not as a suitable site. This was largely due to concerns about whether the development of this site would result in a sustainable pattern of development and the impact on the Green Belt, as well as uncertainty about contamination caused by the previous landfill use on the site”. [my emphasis].*

3. The Council’s HELAA was published in June 2016. At paragraph 2.6.6 the Council confirms that it should take into consideration: *“Hazardous Risks to human health”* and whether *“development would result in unavoidable or unacceptable risk of groundwater pollution”*.

4. At paragraph 2.6.28 the Council states:

*“The Council needs to be certain that the land within a site is available for development, as well as being suitable and achievable, before it can pass the Stage 2 Assessment of the HELAA and be considered for allocation in the Local Plan, particularly for Green Belt sites.” [my emphasis].*

5. However, the HELAA site assessment for WGC5 does not identify any Development Plan or National Policy Constraints relating to land contamination. Under Physical Constraints, the HELAA merely states:

*“Environment Agency has indicated that there is a potential risk from mobilisation of contaminants into the groundwater and other bodies as a result of development. Risks to contaminants to other receptors also need to be assessed.”*

6. Under “Potential Environmental Impacts” the HELAA does not make any reference whatsoever to the contamination on the site or the likely mobilisation of the known contaminates through the movement of surface water and ground water which, due to the topography of the land, would be likely to result in contamination of the land to be allocated for housing.

7. The HELAA “Conclusions” state:

*“The historic landfill area may need to be recapped to facilitate its use as part of the development. Any changes to the land above it may have implications for landfill gas management. Threats posed by this would need to be examined and addressed.”*

It then states:

*“Given the site’s location within an Inner Ground Source Protection Zone, any development of the site would need to avoid the mobilisation of contaminates and pollution of groundwater associated with previous uses as informed by a contaminated land survey”*

8. Notwithstanding the absence of any evidence from the Council or the landowner that the site is either suitable or achievable, the HELAA found the site to be *“suitable, available and achievable”* for 1,200 dwellings (an increase of 500 new dwellings above the Regulation 18 consultation) and stated:

*“Risks to groundwater and from landfill gas would need to be addressed at the planning application stage.”*

9. The Council’s Site Selection Report published in June 2016 found WGC5 to be *“Suitable for Allocation”* for 1,200 new dwellings, again without any mention at all of the site’s contamination or the risk that the site may be seriously delayed or not deliverable.

10. The submission Local Plan was subject to Regulation 19 consultation in the period September and October 2016. Under Policy SADM 22, WGC5 (renamed SDS2) was allocated for 1,200 new dwellings, all to be delivered in the 0 to 10 year period. Policy SP 19 provides the policy context for delivery of the new houses. This Policy makes no mention whatsoever about (1) the contamination under the site, (2) the need for site investigation or testing, (3) the risk of surface water or ground water mobilisation of contaminants, (4) the management of gas, (5) any necessary remediation or (6) the severe risk that the site may not be deliverable.
11. The submission Local Plan “Justification” (paragraph 14.35 - page 159) for the allocation of WGC5/SDS2 makes no reference to the contaminated land or to any necessary investigation, management or remediation.
12. The submission Local Plan Housing Trajectory (Figure 17 page 238) suggests that housing delivery on WGC5/SDS2 will commence in 2020/21 with 100 new dwellings delivered in that year, followed by six consecutive years at 150 dwellings per annum and then two final years at 100 dwellings per annum. This would envisage the total delivery of 1,200 new dwellings over a nine-year period. However, given that neither the landowner nor the Council has any knowledge in respect of the contamination on the site or evidence that the necessary management and remediation of that contamination can be achieved, the Council’s Housing Trajectory has no foundation.
13. The Council’s Sustainability Appraisal considers Policy SP 19 in respect of WGC5/SDS2 at paragraphs 6.218 to 6.229. Remarkably, there is no mention of the contamination or the potential impact to surface water, ground water, remediation or potential hazards to human health. Equally, the SA objectives at Table 6.12 on page 117 (Allocated Sites) makes no reference to the site’s history, the existing contamination or the necessary investigation, management or remediation.
14. The Council has advanced WGC5/SDS2 through Regulation 18 and Regulation 19 consultation and is now supporting the allocation of this site at the Examination in Public without previously undertaking (or requiring to be undertaken) any investigation, any examination or any assessment of the suitability of the site for housing development and, more importantly, the Council has not made any such information available to the public during public consultation. As such, Regulation 18 and Regulation 19 consultation in respect of WGC5/SDS2 was incomplete and flawed. These are very serious procedural failings which require rectification before the Examination in Public can consider whether or not WGC5/SDS2 is a suitable or deliverable site in accordance with NPPF paragraph 47 (Footnotes 11 and 12).

## **Matter 1 – Green Belt**

15. The Council's Green Belt assessment of WGC5/SDS2 comprises the SKM Stage 1 report and the Council's own Stage 2 report.
16. The site is located to the east of the narrow and fragile gap between Welwyn Garden City and Hatfield, the two First Tier settlements in the borough. The site is within open countryside and visually exposed, particularly having regard to the topography of the site on its south and southeast facing landscape.
17. It has not been made clear or justified why the Council is seeking to release additional areas of the most open land from the Green Belt, to create Urban Open Land (UOL 230), when those areas are not allocated for any development.
18. The Key to the Master Plan (page 158 – submission Local Plan) is too vague and therefore not robust when seeking to identify the boundary for the proposed housing areas. This plan should be significantly more detailed in the Local Plan.
19. The connection between the proposed housing areas and the existing Green Belt boundary is best illustrated by Proposal Map 3 from the WHBC District Plan 2005 with the boundary of WGC5/SDS2 imposed thereon (see Appendix 1 hereto) which shows the site (WHBC - HELAA 2016) "hanging" from a small connection to the existing Green Belt boundary. The awkwardness of the site in relation to the existing Green Belt boundary is not contiguous with the urban area to the south of Welwyn Garden City, which might explain why the Council proposes to release the much larger area of land from the Green Belt, including UOL 230, to create the illusion of a coherent Green Belt boundary.

## **Matter 2 – Green Corridor**

20. The "Green Corridor" as described in Policy SP 12 and shown on the map at page 109 of the submission Local Plan appears to be no more than a green arrow running predominantly from east to west/west to east across existing open countryside, most of which is in Green Belt with little or no risk of harmful development. It has not been made clear what the proposed Green Corridor actually adds to the existing environment, ecology, habitats or public access, or to the aims of paragraph 114 of the NPPF.
21. The proposed development of WGC5/SDS2 would cause harm to the prominent area of land to the south and southeast of Welwyn Garden City which sits in open countryside with significant views into and out of the site to and from the expanse of

surrounding countryside and the village of Essendon. The topography of the land adds to the degree of harm that would be caused by development in that landscape.

22. The development of WGC5/SDS2 would be harmful to the aims and objectives of Policy SP 12.

### **Matter 3 - Ecology**

23. WGC5/SDS2 is a contaminated site. A full ecological study should be undertaken and published for the public to review (as part of a formal Regulation 19 consultation) before this site is considered further for allocation.

### **Matter 4 - Minerals**

24. Paragraphs 142, 143 and 144 of the NPPF require the best use and long-term conservation of minerals and the Local Plan should contain policies to encourage the prior extraction of minerals and to avoid the sterilisation of minerals.
25. There is a rich belt of sand and gravel running from St. Albans, through Hatfield and Welwyn Garden City and eastwards to Hertford and Ware (see Hertfordshire Minerals Local Plan Review 2002 – 2016).
26. The wording of Policy SP 19 attempts to give priority to housing delivery over mineral extraction. The Policy states:

*“The developer must demonstrate the extent of the mineral that may be present and the likelihood of prior extraction in an environmentally acceptable way has been fully considered. As a minimum, an assessment of the depth and quality of mineral together with an appraisal of the consequential viability for prior extraction **without prejudicing the delivery of housing** within the plan period should be provided.”*  
[my emphasis].

27. The words *“without prejudicing the delivery of housing”* seek to change the priority and hierarchy of the adopted Mineral Local Plan to allow the WHBC Local Plan to prioritise the delivery of housing over the prior extraction of minerals, thus making it easier for the Borough Council to sterilise mineral resources, potentially without measure or quantification of the scale or harm caused to the national importance of preserving and extracting mineral reserves. The proposed Policy wording is in direct conflict with paragraphs 142, 143 and 144 of the NPPF and contradicts Mineral

Policies 4 and 5 of the adopted Hertfordshire Minerals Local Plan Review 2002 – 2016.

28. The wording of Policy SP 19 (and Policy SP 22) should be amended to comply with the NPPF and to be consistent with the adopted Hertfordshire Mineral Local Plan, which should not be usurped by a Local Plan.
29. Policy EWEL1 in the East Herts District Plan uses the same wording as Policy SP 19. In order to avoid a conflict in the EHDC Local Plan with the adopted HCC Mineral Local Plan, the Inspector for the Examination of the EHDC Local Plan may wish to consider an amendment to the wording in Policy EWEL1.
30. The area to the south of the borough does not have any (or any significant) sand and gravel mineral resources (the sub-stratum changes to clay, south of Hatfield). As such, the large villages of Welham Green, Brookmans Park and Cuffley do not contain any viable mineral resources.
31. It is sequentially irrational for the WHBC submission Local Plan to allocate a number of sites within the rich belt of sand and gravel reserves, in preference to reasonable alternative sites within the borough, which do not have any mineral resources to be extracted or sterilised.

#### **Matter 5 – Other Environmental Considerations**

32. It is understood that surface water and ground water is likely to be contaminated due to unregulated and unrecorded industrial and domestic landfill operations spanning the past 100 years. Due to the topography of the land, the surface and ground water naturally drains from the landfill area of the site into and under the proposed area for residential development. The Council has not presented any information or evidence to the public, during Regulation 18 or Regulation 19 consultation, to explain the nature of this contamination, its management, the risk to public health or any necessary remediation.
33. It is unacceptable to allocate a major site for residential development, without having robust evidence to demonstrate that the site is suitable and achievable and that dwellings on the proposed residential sites would be safe for human habitation.

34. Section 11 (in particular Paragraphs 120 and 121) of the NPPF sets out the policies required to ensure that development of land and its environment is appropriate for its location.
35. Documents EX34, EX35, EX36 and EX37 all appear to have been submitted to WHBC in the period October 2017 to December 2017. Most of these documents relate to the landowner seeking to promote the site for development, but some are from objectors, notably the Gascoyne Cecil Estate (Hatfield House).
36. Letters from JB Planning dated 6 October 2017 and 3 November 2017, on behalf of the Gascoyne Cecil Estate, express serious concerns that represent matters of wide public interest and grave concern. Aurora Properties agrees fully with the concerns expressed by JB Planning.
37. Furthermore, it is potentially unlawful for WHBC to promote and subsequently allocate WGC5/SDS2 for residential development without an objective assessment of the reasonable alternatives in its Sustainability Appraisal and an adequate explanation for why WGC5/SDS2 was sequentially allocated in preference to those reasonable alternatives.

#### **Noise and Air Quality**

38. The proposed residential development on WGC5/SDS2 is located immediately adjacent to the Burnside Waste Management and Reclamation Centre, which creates noise, dust and vibration. It is entirely contrary to normal planning objectives to locate new housing within the vicinity or proximity of this “bad neighbour” activity. Paragraph 123 of the NPPF applies.

#### **Matter 6 – Sustainable Location and Movement**

39. WGC5/SDS2 compares poorly with the reasonable alternative sites identified by the Council, but which have not been allocated. The three large villages to the south of the borough all have railway stations, established bus routes, schools, shops, easy access to the A1 and the M25 and a wide range of services, amenities and facilities. Welwyn village, to the north of the borough, does not have a railway station but is, in all other respects, a highly sustainable location. The Council should first consider for allocation, sequentially ahead of WGC5/SDS2, all of the sites which it has found to be “*suitable, available and achievable*” and to be “*reasonable alternatives*” in the highly sustainable large villages.

## **Matter 7 – Historic Heritage and Urban Design**

40. Hatfield House and The Palace are Grade 1 Listed Buildings of national significance and the grounds of Hatfield House are Grade 1 Registered Historic Parks and Gardens.
41. Policy SP 12 and SP 19 simply requires the protection of heritage assets and their setting “*through appropriate mitigation measures*”. However, this Policy manifestly fails to protect the heritage assets and their setting from harmful development. The wording of Policy SP 12 and SP 19 should be amended to give clear priority and protection to the heritage assets and their setting. Any development which causes harm to those assets, or to their setting, should be refused not merely mitigated.

## **Matter 8 – Retail**

42. The creation and operation of a retail centre requires critical mass to achieve economic viability. It is therefore unlikely that any retail provision on WGC5/SDS2 would be viable without significant subsidy in the early years. There is no provision in Policy SP 12 or SP 19 to require the delivery of retail and other services in the early years of the development or to support the retail and other services until critical economic mass is achieved.

## **Matter 9 – Gypsy and Travellers**

43. No Comment.

## **Matter 10 - Waste**

44. Paragraphs 2 to 14 above are reiterated here.

## **Matter 11 - Implementation**

45. The Housing Trajectory states the delivery of housing in the WHBC area to be:

	<b>SDS2</b>
2020/21	100
2021/22	150
2022/23	150
2023/24	150
2024/25	150
2025/26	150
2026/27	150
2027/28	100

2028/29	100
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	1,200

46. Appendix B Strategy Worksheet (pages 308 and 309 of the EHDC submission Local Plan) provides a broad brush housing trajectory:

<b>EWEL1</b>		
2017 – 2022	210	(average 42 per annum)
2022 – 2027	850	(average 170 per annum)
2027 – 2033	290	(average 58 per annum)
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	1,350	

47. The combined housing trajectory for the period 2022 to 2027 is 1,750 over a six-year period, which is 292 new dwellings per annum. This is a bold and optimistic housing delivery trajectory, which would require the completion of 5.6 homes (within a tight geographical area) every week for six consecutive years.
48. The Council should review its housing trajectory and its housing strategy to take advantage of a wider dispersal of suitable sites throughout the borough, across all market sectors and in particular those locations which are not fettered by environmental obstacles or mineral reserves which could delay or prevent the delivery of new dwellings in the first five and ten years of the Plan Period. This would reduce the pressure on Birchall Garden Suburb to deliver new homes at an over-optimistic rate and give the Council greater flexibility. All of the unallocated sites around the four large villages are capable of delivery within the first five to ten years of the Plan Period, with a high degree of certainty and do not suffer the encumbrance of contamination or mineral reserves.

**Conclusion**

49. The Council has failed to properly assess or analyse the suitability or deliverability of WGC5/SDS2. This does not comply with paragraph 47 of the NPPF.
50. Where the Council has allocated unsuitable sites, it has applied a lower and inconsistent standard of scrutiny to the planning, environmental, practical and technical obstacles to delivery of those sites, which is in significant contrast to the unjustified negative scrutiny of the unallocated sites in the four large villages. This inconsistency is clearly visible in the allocation of WGC5/SDS2 but also applies to BrP4/HS22, BrP7/HS24 and Hat11/HS11 where the Council has allocated sites that

are remote, disconnected and unsustainable in preference to more suitable and sustainable sites in the large villages.

51. The Council's inconsistent assessment and allocation of sites, for what appear to be political rather than planning reasons, is not positive, not justified, not effective and not consistent with national policy. The Council's strategy does not comply with paragraph 182 of the NPPF and the submission Local Plan is not therefore sound.

52. There is no reason why the four large villages should not, or could not, each contribute between 750 and 1,000 new homes within the Plan Period and, in particular, to the first five years of the Plan Period. This would deliver between 3,000 and 4,000 new homes in the borough on suitable sites in highly sustainable locations. Instead, the present combined number of new homes in all four large villages, as proposed by the Council in the submission Local Plan, is just 720:

Welham Green	80
Welwyn	67
Brookmans Park	274 (including BrP4/HS22 outside the existing village)
Cuffley	299 (including 13 dwellings on existing urban sites)
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	720 (Average 180 dwellings per large village)

53. The Council has failed to consider the reasonable alternatives to WGC5/SDS2 or to properly assess the sequential allocation of suitable sites. It has therefore failed to adopt the most appropriate strategy.

54. The allocation of WGC5/SDS2 in preference to the wide range of more suitable and sustainable sites within the borough is in direct conflict with paragraphs 7 and 14 of the NPPF, which require the Council to positively seek opportunities to meet the development needs of its area and to promote sustainable development.

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**10 January 2018**

